Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 240 of 2004

The United India Insurance Company Ltd.
through its Divisional Manager,
Mitra Vatika, Ranipur Mod, Dist.-Hardwar.
..... Appellant.

Versus

(1)Smt. Geeta W/o late Sri Satendra Singh,
(2)Abhisekh S/o late Sri Satendra Singh,
(3)Smt. Mamo W/o late Sri Chatur Singh,
(4)Sri Rajendra Kumar S/o late Sri Chatur Singh,
All R/o Punjabi Colony, Near Vakarar Hostel,
Sector-3, B.H.E.L. Haridwar, District Hardwar.
..... Respondents.

.....

Sri D.S. Patni, learned counsel for the appellant,
Sri I.P. Kohli, Sri Sanjeev Singh, Sri S. Shah learned counsel for the respondents.

Dated: 31st Aug, 2004.

Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and awarded dated 24.05.2004 passed by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Haldwani in W.C. Case No. 7 of 2003, Smt. Geeta and others versus Sri Rajendra Kumar and another, whereby the Insurance Company was directed to pay the compensation of Rs. 3,08,162/- to the claimants.

2- Brief facts giving rise to this appeal are that deceased Satendra Kumar-husband of the claimant Smt. Geeta was employed as driver under the employment of Opp. party No.1 in Vikram No. UP 10-B-8464. On

09.07.2003 the said vehicle met with an accident by colliding with vehicle No. HR-011-9317 due to said accident the driver of vehicle Vikram NO. UP-10B-8464 Satendra Kumar sustained injuries during the course of employment and died due to said injuries on 12.07.2003. The deceased Satendra Kumar was getting Rs. 3000/- per month as salary. He was 29 years old at the time of accident. The said vehicle was insured with Opp.party No.2 on the ill fated day.

3- The claimant filed claim petition, on which notices were issued to the opposite parties. The opposite parties filed their separate written statement. The Opp.party No.1 admitted that he is the registered owner of vehicl Vikram No. UP 10 B-8464 and stated that the deceased Satendra Kumar died due to the injuries sustained in the said accident. The Insurance Company-Opp.party No.2 denied the allegations made in the claim petition and alleged that the Opp.party No.1 Rajendra Kumar and deceased Satendra Kumar are real brothers. The deceased was not in the employment of Rajendra Kumar. The deceased died in the accident while he was driving his own Vikram. The learned Workmen's Compensation Commissioner on the pleadings of the parties adduced by the parties granted the award to the evidence adduced by the parties granted the award to the claimants accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the the learned Workmen's Compensation Commissioner had erred in not considering that the deceased and the Opp.party No.1/owner of the vehicle Vikram were brothers and the deceased was not an employee of owner and at the time of the alleged accident

the deceased was driving the vehicle in the capacity of owner. We have gone through the material on record and perused the impugned award. In support of their case before the learned Commissioner, the claimants produced Smt. Mamo Devi who is mother of the deceased in the witness box. She deposed on oath the deceased Satendra was one of her four sons. He was doing the job of driver. Earlier he was driving the Tamp of some other owner in Hardwar. When her another son Rajendra purchased Vikram then Satendra Kumar was driving the same on payment of monthly salary She further denied that all the four brothers were resideing jointly. She further deposed that her husband died about 10 years ago and since then she was residing with deceased Satendra Kumar. The opposite parties did not rebut her testimony by adducing any evidence. For want of any evidence by the opposite parties regarding the employment and income of the deceased we find that the learned Commissioner has not committed any mistake in holding that according to the post mortem report the deceased was aged about 29 years. The income of the deceased was also rightly held according to the provisions of Minimum Wages Act. There is no reason to interfere with the finding of the learned Commissioner. Accordingly, the appeal has no force on merit.

5- The appeal is dismissed. The impugned order under appeal is affirmed. No order as to costs.

(B. S. Verma, J.) **(P.C. Verma, J.)**

31-08-2004
P.Singh